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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 CHRISTOPHER ALLEN CAIN,

11 Defendant.

NOS: 2:16-CR-69-RMP  
2:16-CR-176-RMP

ORDER DENYING DEFENDANT'S  
MOTION FOR NEW TRIAL

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13 Before the Court is Defendant's Motion for New Trial, ECF No. 135 (in 16-  
14 CR-69-RMP) and ECF No. 119 (in 16-CR-176-RMP), and the Government's  
15 Response to Defendant's Motion for New Trial, ECF No. 141 (in 16-CR-69-RMP)  
16 and ECF No. 125 (in 16-CR-176-RMP). The Court has considered the motion, the  
17 parties' arguments, all relevant filings, and is fully informed.

18 **BACKGROUND**

19 A grand jury indicted Defendant, Mr. Cain, on April 19, 2016, for being a  
20 felon in possession of a firearm. ECF No. 1 (in 16-CR-69-RMP). A grand jury  
21 indicted Defendant, Mr. Cain, on October 18, 2016, for possession with intent to

1 distribute five grams or more of actual methamphetamine. ECF No. 1 (in 16-CR-  
2 176-RMP). Mr. Cain's two cases were consolidated for trial. ECF No. 76 (in 16-  
3 CR-69-RMP) and ECF No. 61 (in 16-CR-176-RMP). On May 23, 2017, a jury  
4 found Mr. Cain guilty of being a felon in possession of a firearm and of possession  
5 with intent to distribute five grams or more of actual methamphetamine. ECF No.  
6 98 (in 16-CR-69-RMP) and ECF No. 81 (in 16-CR-176-RMP).

7 On June 6, 2017, the Court granted Mr. Cain's motion for an extension of  
8 time to move for a new trial. *See* ECF No. 105 (in 16-CR-69-RMP) and ECF No.  
9 89 (in 16-CR-176-RMP). On July 10, 2017, the Court again granted Mr. Cain's  
10 motion for an extension of time to move for a new trial. *See* ECF No. 125 (in 16-  
11 CR-69-RMP) and ECF No. 109 (in 16-CR-176-RMP). On July 27, 2017, Mr. Cain  
12 timely moved for a new trial. *See* ECF No. 135 (in 16-CR-69-RMP) and ECF No.  
13 119 (in 16-CR-176-RMP). The United States responded to Mr. Cain's motion for  
14 a new trial on August 2, 2017. *See* ECF No. 141 (in 16-CR-69-RMP) and ECF  
15 No. 125 (in 16-CR-176-RMP).

## 16 **DISCUSSION**

### 17 ***Legal Standard for Granting a New Trial***

18 "Upon the defendant's motion, the court may vacate any judgment and grant  
19 a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). In  
20 deciding a motion for new trial, the district court is subject to review only for an  
21 abuse of discretion. *See United States v. Hursh*, 217 F.3d 761, 769 (9th Cir. 2000).

1 However, a motion for new trial “should be granted only in exceptional cases in  
2 which the evidence preponderates heavily against the verdict.” *United States v.*  
3 *Pimentel*, 654 F.2d 538, 545 (9th Cir. 1981) (internal quotations omitted).

4 The district court’s power to decide a motion for new trial is broad; the court  
5 “need not view the evidence in the light most favorable to the verdict.” *United*  
6 *States v. Alston*, 974 F.2d 1206, 1211 (9th Cir. 1992) (*quoting United States v.*  
7 *Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980)). Where the evidence preponderates  
8 sufficiently heavily against the verdict to suggest that serious miscarriage of justice  
9 has occurred, a new trial may be warranted. *United States v. Kellington*, 217 F.3d  
10 1084, 1097 (9th Cir. 2000) (*quoting Alston*, 974 F.2d at 1211-12).

11 Mr. Cain cites three bases for a new trial. First, Mr. Cain argues that the  
12 cross-admissibility of the drug and firearm evidence was unduly prejudicial. ECF  
13 No. 135 at 1-3 (in 16-CR-69-RMP) and ECF No. 119 at 1-3 (in 16-CR-176-RMP).  
14 Second, Mr. Cain argues that the trial was rendered unfair by Trooper Lux’s  
15 testimony regarding items he seized. ECF No. 135 at 3-4 (in 16-CR-69-RMP) and  
16 ECF No. 119 at 3-4 (in 16-CR-176-RMP). Third, Mr. Cain argues that the trial  
17 was rendered unfair by Special Agent Piergallini’s testimony that firearms are  
18 designed to repel oils, dirt, and grease. ECF No. 135 at 4-5 (in 16-CR-69-RMP)  
19 and ECF No. 119 at 4-5 (in 16-CR-176-RMP).

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1           ***Cross-Admissibility of Drug and Firearm Evidence***

2           Mr. Cain argues that the cross-admissibility of the drug and firearm evidence  
3 created sufficient undue prejudice to require a new trial. Mr. Cain presented  
4 arguments against cross-admissibility in a pretrial motion seeking to exclude the  
5 evidence of drugs in the firearm case and the evidence of a firearm in the drug  
6 case. ECF No. 49 at 3-4 (in 16-CR-69-RMP) and ECF No. 34 at 3-4 (in 16-CR-  
7 176-RMP). The Court denied Mr. Cain's motion, finding that the drug and firearm  
8 evidence were inextricably intertwined to the illicit pursuit of drug trafficking  
9 based on the fact that the drugs and firearm both were found within the reach of the  
10 driver's seat in the car where Mr. Cain was sitting when officers detained him.  
11 ECF No. 61 at 3-4 (in 16-CR-69-RMP) and ECF No. 46 at 3-4 (in 16-CR-176-  
12 RMP). The Court found the evidence of drugs and the firearm admissible and  
13 relevant in both cases. *Id.*

14           Mr. Cain contends that events at trial demonstrate that the evidence should  
15 not have been cross-admissible. ECF No. 135 at 1-3 (in 16-CR-69-RMP) and ECF  
16 No. 119 at 1-3 (in 16-CR-176-RMP). In support of his motion, Mr. Cain cites the  
17 closing arguments made by the United States. *Id.*

18           Mr. Cain's guilt was decided by a jury. The evidence demonstrated that the  
19 drugs and firearm were found in close proximity to each other, inside a vehicle  
20 operated by Mr. Cain, and within Mr. Cain's immediate reach. The jury could  
21 reasonably find Mr. Cain guilty of the firearm charge in the absence of the drug

1 evidence. The jury could reasonably find Mr. Cain guilty of the drug charge in the  
2 absence of the firearm evidence. The jury weighed the evidence as it was  
3 presented and made any inferences accordingly, finding Mr. Cain guilty on both of  
4 the charged counts.

5 When twelve jurors sit down to deliberate upon their solemn duty of  
6 pronouncing innocence or guilt upon a fellow human each exposes his  
7 own particular views of the evidence to the sound judgment of all with  
the result that tangential views have little chance of survival and  
practically none of getting eleven approving votes.

8 *Sue Hoo Chee v. United States*, 163 F.2d 551, 553 (9th Cir. 1947).

9 Considering the facts of the case and the jury's consideration of them, the  
10 Court does not find the cross-admissibility of the drug and firearm evidence unduly  
11 prejudicial. The Court denies Mr. Cain's motion for new trial as to the cross-  
12 admissibility of the drug and firearm evidence.

### 13 ***Trooper Lux's Improper Testimony***

14 Mr. Cain argues that the trial was rendered unfair by Trooper Lux's  
15 testimony regarding items he seized. ECF No. 135 at 3-4 (in 16-CR-69-RMP) and  
16 ECF No. 119 at 3-4 (in 16-CR-176-RMP). In his testimony, Trooper Lux stated  
17 that baggies are "potential evidence of a crime of distribution of a controlled  
18 substance." ECF No. 135 at 3 (in 16-CR-69-RMP) and ECF No. 119 at 3 (in 16-  
19 CR-176-RMP). On Defendant's objection, the Court struck Trooper Lux's  
20 testimony and ordered the jury to disregard it. The Court also provided an  
21 instruction to the jury not to consider evidence that was stricken.

1 The law assumes that “jurors follow their instructions.” *Richardson v.*  
2 *Marsh*, 481 U.S. 200, 206 (1987). However, “there are some contexts in which the  
3 risk that the jury will not, or cannot, follow instructions is so great, and the  
4 consequences of failure so vital to the defendant, that the practical and human  
5 limitations of the jury system cannot be ignored.” *Bruton v. United States*, 391  
6 U.S. 123, 135 (1968). Improper testimony might preponderate so heavily against  
7 the verdict that a new trial is required if the jury based its finding of guilt solely on  
8 the challenged testimony. If Trooper Lux’s improper testimony were the only  
9 evidence supporting the jury’s finding that Mr. Cain was guilty of possession with  
10 intent to distribute methamphetamine, the interests of justice might require a new  
11 trial. However, in addition to the drugs found by the police during their search, the  
12 car operated by Mr. Cain contained small baggies, scales, and drug related  
13 paraphernalia.

14 The Court finds that the jury could reasonably find Mr. Cain guilty of  
15 possession with intent to distribute methamphetamine in the absence of Trooper  
16 Lux’s stricken statement. Therefore, Trooper Lux’s statement creates no serious  
17 miscarriage of justice. The Court denies Mr. Cain’s motion for new trial as to  
18 Trooper Lux’s stricken testimony.

19 ***Special Agent Piergallini’s Testimony***

20 Mr. Cain also contends that the trial was rendered unfair by Special Agent  
21 Piergallini’s testimony that firearms are designed to repel oils, dirt, and grease.

1 ECF No. 135 at 4-5 (in 16-CR-69-RMP) and ECF No. 119 at 4-5 (in 16-CR-176-  
2 RMP). He argues that Special Agent Piergallini's testimony that firearms are  
3 designed to repel oils, dirt, and grease was outside the scope for which the United  
4 States offered Special Agent Piergallini as an expert witness.

5 Considering all the evidence presented to the jury, the Court finds that, in the  
6 absence of Special Agent Piergallini's statement, the jury could reasonably find  
7 that Mr. Cain possessed the firearm found in the vehicle he operated. Therefore,  
8 Special Agent Piergallini's statement creates no serious miscarriage of justice. The  
9 Court denies Mr. Cain's motion for new trial as to Special Agent Piergallini's  
10 challenged testimony.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Defendant's Motion for a New Trial, **ECF No. 135** (in 16-CR-69-RMP)  
13 and **ECF No. 119** (in 16-CR-176-RMP) is **DENIED**.

14 2. Defendant's Motion to Expedite, **ECF No. 136** (in 16-CR-69-RMP) and  
15 **ECF No. 120** (in 16-CR-176-RMP), is **DENIED** as **MOOT**.

16 The District Court Clerk is directed to enter this Order and provide copies to  
17 counsel.

18 **DATED** September 26, 2017.

19  
20 s/ Rosanna Malouf Peterson  
ROSANNA MALOUF PETERSON  
21 United States District Judge